

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

CHRISTOPHER D. JOHNSON,

Plaintiff,

v.

Warden CYNTHIA NELSON, et al.,

Defendants.

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1:06-CV-145 (WLS)

ORDER

Before the Court is a Report and Recommendation from United States Magistrate Judge Richard L. Hodge, filed March 6, 2008. (Doc. No. 36). It is recommended that Defendants' motion for summary judgment (Doc. No. 20) be denied. Defendants' attorney has informed the Court that he will not file an objection.

Upon thorough review of the record and the comments made in United States Magistrate Judge Richard L. Hodge's Report and Recommendation (Doc. No. 36), the Court has reason to question whether cognizable legal claims exist in this case, or in the alternative, that the issues may be narrowed and/or focused. The Court has the discretion and duty to act as a gatekeeper to make sure that only properly triable and refined issues are permitted to ultimately reach a jury. This ensures that judicial resources, including, *inter alia*, time and money, are allocated efficiently.

Based on the above considerations, Defense Counsel is hereby **ORDERED** to submit a substantive motion for summary judgment to the Court with respect to Plaintiff's pending claims within **forty (40) days of the issuance and entry of this order**. Said motion shall be in good faith, substantive and not cursory. Plaintiff's remaining claims include:

Count One: violation of 42 U.S.C. §1983 and Eighth Amendment failure to protect.

Count Two: violation of 42 U.S.C. §1983, deliberate indifference to a serious medical

need, and intentional infliction of emotional distress under state law.

Plaintiff will have **twenty (20) days** to file a responsive pleading to Defendant's motion. Any request for discovery in connection with said response shall be promptly and timely made.

Accordingly, upon full review and consideration upon the record, the Court finds that said Report and Recommendation (Doc. No. 36) should be, and hereby is, **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein. Accordingly, Defendants' motion for summary judgment (Doc. No. 20) is **DENIED without Prejudice**. The case shall proceed consistent with this order.

SO ORDERED, this 12th day of March, 2008.

/s/W. Louis Sands
THE HONORABLE W. LOUIS SANDS,
UNITED STATES DISTRICT JUDGE